

INTRODUCTION

The following is a comprehensive analysis of the provisions of the California Public Records Act (or PRA) for preemption by the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA). In addition, a separate link from this site contains a summary matrix of the preemption analysis of the PRA. The complete text of the California Public Records Act can also be found in a separate link.

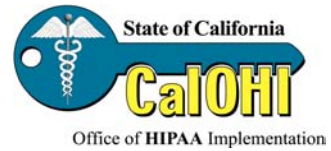
The California Public Records Act is the State equivalent of the Federal Freedom of Information Act. It regulates access by the public to public records held by government agencies, including medical information protected under HIPAA. The PRA applies to all State and local government agencies, offices, officers, departments, divisions, bureaus, boards, and commissions. (Gov. Code § 6252(a), (b).) It is not applicable to the Legislature or the Judicial Branch. (Gov. Code § 6252(a).)

This analysis (and the accompanying related draft PRA preemption analysis document) is the final and official approved preemption analysis of the California Office of HIPAA Implementation with respect to this California law.

Additional Considerations:

- This analysis is a planning document which provides baseline information only—it is the responsibility of Individuals and entities regulated by the PRA and by HIPAA to become familiar with these laws and this analysis and to draft specific policies and procedures for their particular operations and needs.
- Individuals and entities regulated by the PRA and by HIPAA should have their legal and HIPAA staff carefully review this analysis (and the other related PRA preemption analysis documents) prior to HIPAA implementation.
- Because HIPAA regulations and California law are constantly changing and the body of knowledge/interpretations are complex and continually evolving, this analyses will remain subject to revision by CalOHI as required by these changes.
- This analysis represents the best judgment of CalOHI. However, because of the complexity of HIPAA regulations and their interplay with California law, there are many instances where more than one correct interpretations may apply with differing results.

**State Privacy Law HIPAA Preemption Analysis:
California Public Records Act
(Gov. Code § 6250, et seq.)**



Please forward any comments, corrections, etc. to the attention of:

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Government Code Section 6250, et seq.:

(See, the complete text of the California Public Records Act.)

Non-Section 1178(a)(2)(B) “Carve Out”?

No.

Section 1178(a)(2)(B) “Carve-Out”? (1st Test: Contrary To HIPAA?)

No. HIPAA provides that:

“A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.”

(45 C.F.R. § 164.512(a)(1).)

The disclosures set forth in the PRA are required, rather than permitted. Therefore HIPAA section 164.512(a)(1) applies. In addition, the HIPAA privacy rules specifically permits covered entities “to make disclosures that are required by State Freedom of Information Act (FOIA) laws[.]” such as the California Public Records Act. (45 C.F.R. § 164.512(a); section-by-section discussion of comments, 65 F.R. 82597.) The California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, requires state agencies to make their public records available for inspection and copying by the public (Gov. Code §§ 6253, 6256) unless a particular record is “exempt” from disclosure (Gov. Code § 6254). However, Government Code Section 6254(c) provides that “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy,” are exempt from disclosure under the Public Records Act. Accordingly, a covered entity would not find it impossible to comply with both the California Public Records Act and federal requirements and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

Section 1178(a)(2)(B) “Carve-Out”? (2nd Test: More Stringent Than HIPAA?)

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No stringency analysis required because it is not impossible to comply with both this law and HIPAA requirement; and because the law does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA.

Controlling Law(s):

California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and HIPAA Privacy Rule, section 164.512(a)(1).

Any Basis For An Exception Determination Request?

Inapplicable.